

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK  
501 "I" Street  
Sacramento, CA 95814

FILED  
63 JAN 28 AM 10:59  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Northern District of California  
450 Golden Gate Ave., 16th Floor  
San Francisco, CA 94102

**RE: JOSE B HERNANDEZ vs. SANTA CLARA COUNTY SUPERIOR COURT**  
**USDC No.: 2:07-CV-02785-WBS-DAD**

**PJH**

Dear Clerk,

Pursuant to the order transferring the above captioned case to your court, dated January 14, 2008, transmitted herewith are the following documents.

**(PR)**

**Electronic Documents: 1 to 3.**

Documents maintained electronically by the district court are accessible through PACER for the Eastern District of California at <https://ecf.caed.uscourts.gov>.

Please acknowledge receipt on the extra copy of this letter and return to the Clerk's Office.

Very truly yours,

**January 14, 2008**

/s/ J. Anderson

Deputy Clerk

RECEIVED BY:

Please Print Name

DATE RECEIVED:

NEW CASE  
NUMBER:

IN THE UNITED STATES DISTRICT COURT  
OR THE EASTERN DISTRICT OF CALIFORNIA

JOSE B. HERNANDEZ,

Petitioner,

No. CIV S-07-2785 WBS DAD P

VS.

SANTA CLARA SUPERIOR COURT,

**Respondent.**

## ORDER

Petitioner, a prisoner currently detained by the Immigration and Customs

Enforcement Agency, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C.

§ 2254. Petitioner challenges a judgment of conviction entered against him in Santa Clara

County Superior Court and maintains that he received ineffective assistance of counsel.

Petitioner has not filed a request to proceed in forma pauperis or paid the filing fee.

Petitioner is currently incarcerated at a Federal Detention Center in Eloy, Arizona

and was convicted in Santa Clara County, California. While both the United States District

Court in the district where petitioner is confined and the United States District Court in the

district where petitioner was convicted have jurisdiction, see *Braden v. 30th Judicial Circuit*

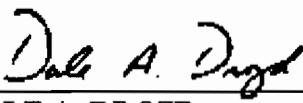
Court, 410 U.S. 484 (1973), any and all witnesses and evidence necessary for the resolution of

|||||

1 petitioner's application are more readily available in Santa Clara County. Id. at 499 n.15; 28  
2 U.S.C. § 2241(d).

3 Accordingly, in the furtherance of justice, IT IS HEREBY ORDERED that this  
4 matter is transferred to the United States District Court for the Northern District of California.  
5 28 U.S.C. § 2241(d); 28 U.S.C. § 1406(a).

6 DATED: January 11, 2008.

7   
8 DALE A. DROZD  
9 UNITED STATES MAGISTRATE JUDGE

10 DAD:9  
11 hern2785.108b

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**CLOSED, HABEAS**

**U.S. District Court**  
**Eastern District of California - Live System (Sacramento)**  
**CIVIL DOCKET FOR CASE #: 2:07-cv-02785-WBS-DAD**  
**Internal Use Only**

(HC)Hernandez v. Santa Clara County Superior Court et al  
Assigned to: Judge William B. Shubb  
Referred to: Magistrate Judge Dale A. Drozd  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State) Date Filed: 12/26/2007  
Date Terminated: 01/14/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus (General)  
Jurisdiction: Federal Question

**Petitioner**

**Jose B Hernandez**

represented by **Jose B Hernandez**  
A-92991767  
ILE Detention Center  
1205 E. Hauna Road  
Eloy, AZ 85231  
PRO SE

V.

**Respondent**

## Santa Clara County Superior Court

**Respondent**

## San Jose City

Date Filed	#	Docket Text
12/26/2007	•1	PETITION for WRIT of HABEAS CORPUS by Jose B Hernandez. (Plummer, M) (Entered: 12/26/2007)
12/26/2007	•2	PRISONER NEW CASE DOCUMENTS ISSUED; (Attachments: # <u>1</u> Consent Forms) (Plummer, M) (Entered: 12/26/2007)
12/26/2007	•	SERVICE BY MAIL: <u>2</u> Prisoner New Case Documents for WBS served on Jose B Hernandez. (Plummer, M) (Entered: 12/26/2007)
01/14/2008	•3	ORDER signed by Judge Dale A. Drozd on 1/11/08, CASE TRANSFERRED to the Northern District of California. Original file, certified copy of transfer order, and docket sheet sent. CASE CLOSED. (Anderson, J) (Entered: 01/14/2008)
01/14/2008	•4	TRANSMITTAL of DOCUMENTS re <u>3</u> Order, Case Transferred Out to Another District on *1/14/2008* to * Northern District of California*

	<p>*450 Golden Gate Ave., 16th Floor* *San Francisco, CA 94102*. ** *Electronic Documents: 1 to 3. *. (Anderson, J) (Entered: 01/14/2008)</p>	
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Name JOSE B. HERNANDEZ  
 1705 E. HAWAII RD.  
 Address ELDY, AZ 85231  
A-92991767  
ICE DETENTION CENTER.

CDC or ID Number 00L-767

RECEIVED  
 JAN 23 AM 10:50  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 33 007

*hbw*  
**FILED**

36  
 636  
 (P)

**DISTRICT COURT  
 OF CALIFORNIA**

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF California

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

**PJH**

No. 07 CV 2785 WBS/DAD (PR)

(To be supplied by the Clerk of the Court)

Jose B Hernandez

Petitioner

vs.

Superior Court Santa Clara Co.

Respondent

San Jose CA

**INSTRUCTIONS—READ CAREFULLY**

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## This petition concerns:

 A conviction Parole A sentence Credits Jail or prison conditions Prison discipline Other (specify): INFFECTIVE ASSISTANCE FROM COUNSEL1. Your name: JOSE B. HERNANDEZ2. Where are you incarcerated? U.S. FEDERAL DETENTION CENTER, ELOY ARIZONA3. Why are you in custody?  Criminal Conviction  Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Possession of stolen property possession of stolen vehicle; under influence  
Possession Paraphernaliab. Penal or other code sections: 496(a) 496(a) (Pct) 11550 (Pct) 11364c. Name and location of sentencing or committing court: SANTA CLARA SUPERIOR COURT; HALL  
OF JUSTICEd. Case number: CC596809, 1C626991e. Date convicted or committed: July 12/2005; (5/26/06, no time on this case)f. Date sentenced: 11/13/06g. Length of sentence: 170 days (CC596809) (1C626991, no jail time)h. When do you expect to be released? I HAVE NOT BEEN RELEASED SINCE 11/13/06, I AM ON F.E.  
CUSTODY ANDi. Were you represented by counsel in the trial court?  Yes.  No: If yes, state the attorney's name and address:(me Shway) and mss. Bedolla

4. What was the LAST plea you entered? (check one)

 Not guilty  Guilty  Nolo Contendere  Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

 Jury  Judge without a jury  Submitted on transcript  Awaiting trial

## 6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement" (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

FAILURE TO DEFEND. THE NINTH CIRCUIT ALSO HELD IN THE SAME CASE, THAT ONCE DEFENSE COUNSEL SHOULD HAVE LEARNED THE CORRECT IMMIGRATION SITUATION, HE RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO NEGOTIATE THE CASE WITH THE PROSECUTOR. AND BY FAILING TO MAKE A motion before THE SENTENCING COURT, SEEKING A NON DEPORTABLE RESULT.

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

MANY RESOURCES ARE EASILY AVAILABLE TO PROVIDE DEFENSE COUNSEL WITH THE NECESSARY INFORMATION. SOME OF THE DISABILITIES THAT A NON-CITIZEN LOSSES: LOSS OF OCCUPATIONAL OR DRIVER'S LICENSE, DISQUALIFICATION FROM PUBLIC OFFICE, LOSS OF VOTING RIGHTS, CRIMINAL REGISTRATION REQUIREMENTS, INELIGIBILITY FOR MILITARY SERVICE, HIGHER INSURANCE RATES, AND RESTRICTIONS ON EMPLOYMENT. THE CIRCUITS HAVE HELD THAT DEFENSE COUNSEL MUST TAKE IMMIGRATION CONSEQUENCES INTO ACCOUNT AT SENTENCING IN ORDER TO PROTECT THE CLIENT IF POSSIBLE AGAINST DEPORTATION. WHY SHOULD COUNSEL NOT LIKEWISE BE REQUIRED TO TAKE THE IMMIGRATION CONSEQUENCES INTO ACCOUNT IN NEGOTIATING A PLAN THAT WILL AVOID STRIPPING AWAY LAWFUL PERMANENT RESIDENT STATUS AND FORCING THE DHS TO DEPORT HIM AWAY FROM HOME, WIFE, AND U.S. CITIZEN CHILDREN. NO INTELLIGENT PLANNING DECISION CAN BE MADE BY EITHER LAWYER OR CLIENT WITHOUT FULL UNDERSTANDING OF THE POSSIBLE CONSEQUENCES OF A CONVICTION.

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

INEFFECTIVE ASSISTANCE THE RIGHT TO COUNSEL, SECURED BY THE SIXTH AND EIGHTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 15 OF THE CALIFORNIA CONSTITUTION, INCLUDES THE GUARANTEE THAT THE DEFENDANT WILL RECEIVE EFFECTIVE REPRESENTATION. THE EFFECTIVE COUNSEL REQUIRED BY DUE PROCESS IS COUNSEL REASONABLY LIKELY TO CONFER AND RENDERING, REASONABLY EFFECTIVE ASSISTANCE.

7. Ground 2 or Ground \_\_\_\_\_ (if applicable):

INEFFECTIVE ASSISTANCE OF COUNSEL (FAILURE TO DEFEND)

THE NINTH CIRCUIT ALSO HELD THAT ONE DEFENSE COUNSEL SHOULD HAVE LEARNED THE CORRECT IMMIGRATION SITUATION. ANY PLEA MADE IN SUCH CRIMINAL CONSEQUENCES CAN HARDLY BE LABELED KNOWING AND INTELLIGENT AS REQUIRED BY LAW. *People v. Saenz*.

## a. Supporting facts:

EVEN IF THE CONVICTION IS VALID THEN THE SENTENCE MAY BE VACATED ON GROUNDS OF INEFFECTIVE ASSISTANCE IF COUNSEL FAILURE TO INVESTIGATE OR PURSUE USEFUL SENTENCING ALTERNATIVES WAS NOT THE RESULT OF ANY INVALID TACTICAL DECISION AND PREJUDICE IS SHOWN. THE RIGHT OF A DEFENDANT TO COUNSEL PROCEEDINGS TO THE INEFFECTIVE ASSISTANCE OF COUNSEL SPECIFICALLY APPLIES TO SENTENCING PROCEEDINGS. IN FACT FOR A NON-CITIZEN, THE SENTENCING STAGE IS OFTEN A TRULY CRUCIAL PERIOD IN WHICH THE GREATEST CARE IS NECESSARY IN ORDER TO AVOID ADVERSE IMMIGRATION CONSEQUENCES. THIS IS PARTICULARLY TRUE NOW WHEN MANY VERY COMMON FELONY CONVICTIONS ARE TRANSFORMED INTO "AGGRAVATED FELONIES". DEPENDING UPON THE IMMIGRATION STATUS OF THE CLIENT AND THE NATURE OF THE CRIMINAL CONVICTIONS, THERE ARE MANY DEFENSE PROCEDURES THAT SHOULD BE UNDERTAKEN IN ORDER TO RENDER EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCE. COUNSEL MUST CONDUCT SUFFICIENT RESEARCH INTO THE IMMIGRATION CONSEQUENCES OF THE VARIOUS SENTENCE CHOICES FACING THE CLIENT (OR CONSULT WITH AN IMMIGRATION LAWYER) AND ADVISE THE DEFENDANT OF THE IMMIGRATION EFFECTS OF DIFFERENT CHOICES IN THE SENTENCING PROCESS. FOR INFORMATION ON THE IMMIGRATION EFFECTS OF SENTENCING AND TO ANALYZE WHAT RELIEF IN IMMIGRATION COURT YOUR CLIENT MIGHT HAVE BEEN ELIGIBLE. SEVERAL GROUNDS OF REMAND AND INADMISSIBILITY DEPEND DIRECTLY ON THE SENTENCE.

## b. Supporting cases, rules, or other authority:

ANY PLEA MADE IN IGNORANCE OF SUCH CRIMINAL CONSEQUENCES CAN HARDLY BE LABELED KNOWING AND INTELLIGENT AS REQUIRED BY LAW. *People v. Saenz* (1987) 194 Cal App 3d 1470, 1482. COUNSEL NEVER INFORM PETITIONER THE POSSIBLE CONSEQUENCES OF HIS PLEA; NAMELY THAT HE WOULD BE DEPORTED WHEN HE WAS RELEASED.

8. Did you appeal from the conviction, sentence, or commitment?  Yes.  No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Superior Court of California San Jose

b. Result: Denie

c. Date of decision: DEC/3/07

d. Case number or citation of opinion, if known: (1596809)-(CC626991)

e. Issues raised: (1) INEFFECTIVE ASSISTANCE FROM COUNSEL

(2) COUNSEL NEVER GIVE ME NO INFORMATION

(3) TAKE THE DEAL TODAY, IF YOU HAVE PAPERS DON'T WORRI

f. Were you represented by counsel on appeal?  Yes.  No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court?  Yes.  No. If yes, give the following information:

a. Result: \_\_\_\_\_

b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

I WAS NEVER INFORMED I WAS BORN TO BE DEPORTED UNTIL I FINISH MY SENTENCE

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

BECAUSE MY LAWYER (PUBLIC DEFENDANT) DID NOT ADVISE ME OF ANY CONSEQUENCES, I TRUSTED MY PUBLIC DEFENDANT.

b. Did you seek the highest level of administrative review available?  Yes.  No.  
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court?  Yes. If yes, continue with number 13.  No. If no, skip to number 15.

13. a. (1) Name of court: U.S DISTRICT COURT CLERK OFFICE (ARIZONA DISTRICT)

(2) Nature of proceeding (for example, "habeas corpus petition"): HABEAS CORPUS

(3) Issues raised: (a) INNFFECTIVE ASSISTANCE FROM COUNSEL

(b) COUNSEL NEVER GIVE NO MEANING FULL INFORMATION, IF YOU HAVE PAPER DON'T WORRY

(4) Result (Attach order or explain why unavailable): Pending (CASE TO REVIEWING WEL 6VOT-1360-RBS-G)

(5) Date of decision: AGUST/28/07

b. (1) Name of court: 6TH APPELLATE DISTRICT

(2) Nature of proceeding: HABEAS CORPUS

(3) Issues raised: (a) INNFFECTIVE ASSISTANCE FROM LAWYER

(b) NEVER RECEIVED NO INF. ON IMMIGRATION BY LAWYER

(4) Result (Attach order or explain why unavailable): I HAVE NOT GOT ANSWER FROM LAWYER

(5) Date of decision: Pending

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

\_\_\_\_\_

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

SINCE NOV/12/08; BEING TRYING TO LET THE COURT KNOW ABOUT COUNSEL  
NOW 1 YEAR LATER I AM PAYING FOR COUNSEL INEFFICIENCY

16. Are you presently represented by counsel?  Yes.  No. If yes, state the attorney's name and address, if known:

\_\_\_\_\_

17. Do you have any petition, appeal, or other matter pending in any court?  Yes  No If yes, explain:

\_\_\_\_\_

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I AM ON ELOY FACING DEPORTATION DUE TO COUNSEL'S INEFFICIENCY  
WASLET ANSWER I CAN APPEAL THIS DUE TO

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: DEC/16/07

Page 3 - Annex  
 (SIGNATURE OF PETITIONER)

IMMIGRATION COURT  
1705 E. HANNA RD.  
ELOY, AZ 85231

In the Matter of

HERNANDEZ, JOSE BARAJAS

Case A 92-991-767

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on October 31, 2007.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

The respondent/applicant was ordered removed from the United States to MEXICO  
or in the alternative to \_\_\_\_\_.

Respondent's application for voluntary departure was denied and respondent was ordered removed to \_\_\_\_\_  
or in the alternative to \_\_\_\_\_.

Respondent's application for voluntary departure was granted until \_\_\_\_\_ upon posting a bond in \_\_\_\_\_  
the amount of \$ \_\_\_\_\_ with an alternate order of removal to \_\_\_\_\_.

Respondent's application for:

Asylum was ( ) granted (X) denied ( ) withdrawn ( ) waived/not sought.  
Withholding of removal was ( ) granted (X) denied ( ) withdrawn ( ) waived/not sought.  
A Waiver under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn ( ) waived/not sought.  
Cancellation under Section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) waived/not sought.  
Cancellation of removal under Section 240A(b)(1) was ( ) granted (X) denied ( ) withdrawn  
( ) waived/not sought. If granted it is ordered that the respondent be issued all appropriate documents necessary  
to give effect to this order.

Cancellation of removal under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn  
( ) waived/not sought. If granted it is ordered that the respondent be issued all appropriate documents necessary  
to give effect to this order.

Adjustment of status under section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn  
( ) waived/not sought. If granted, it is ordered that respondent be issued all appropriate documents necessary to  
give effect to this order.

Respondent's application for (X) withholding of removal ( ) deferral of removal under Article III of the  
Convention Against Torture was ( ) granted (X) denied ( ) withdrawn ( ) waived/not sought.

Applicant is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_.

Respondent knowingly filed a frivolous asylum application after proper notice.

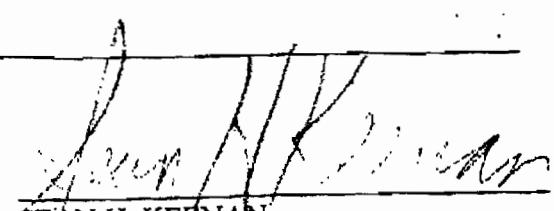
Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration  
Judge's oral decision.

Proceedings were terminated.

Other: \_\_\_\_\_

Date: October 31, 2007

Appeal: WAIVED/RESERVED Appeal Due By:

  
SEAN H. KEENAN  
IMMIGRATION JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Office of the Clerk

501 "I" Street

Sacramento, CA 95814

Divisional Office

2500 Tulare Street

Fresno, CA 93721

December 26, 2007

Case Number: 2:07-CV-02785-WBS-DAD

Case Title: JOSE B HERNANDEZ, vs. SANTA CLARA COUNTY SUPERIOR COURT,

Dear Litigant,

You are hereby notified that the above case number has been assigned to your action. You are to include the complete case number on all documents sent to the court for filing in this case. Failure to do so results in delayed processing of your documents.

All matters in this action shall be sent to the following address until further notice:

Office of the Clerk  
United States District Court  
Eastern District of California  
501 "I" Street, Suite 4-200  
Sacramento, CA 95814

For timely processing of your pleadings or correspondence, please comply with our Local Rules of Court, in particular:

**Local Rule 5-133** The court requires an original plus one copy of each document sent for filing. If you desire to receive a conformed copy for your records, you must send an original and two copies of your document and a pre-addressed postage-paid envelope for us to return your copy to you.

**Local Rule 5-135** Once the defendant(s) have served a responsive pleading, you are under an ongoing duty to serve them with copies of all documents you submit to the court. A proof of service shall be attached to the original of any document lodged or filed with the court, showing the date, manner and place of service. A sample proof of service is attached.

**Local Rule 7-130** Documents submitted to the court must be legible, on 8-1/2" x 11" paper, with writing on one (1) side of the page only. Each separate document must be stapled at the top left corner and pre-punched with two (2) holes centered 2-3/4" apart, 1/2" from the top edge of the page. Each page should be numbered consecutively at the bottom.

**Local Rule 7-132** Every document submitted to the court must include your name, address and prisoner identification number in the upper left hand corner of the first page. The caption on the first page must include the title of this court, the title of the action, the case number assigned to this action (including all initials and letters that follow the number), and the title of your document. If you are pursuing more than one action in this court, you must submit a separate original document and the appropriate number of copies for each action in which you want the document filed.

**Local Rule 6-142** A request for extension of time must state the reason an extension is needed. A request for extension of time should be filed before the deadline in question.

**Local Rules 30-250, 33-250, 34-250 and 36-250** Discovery requests or responses should not be submitted to the court unless they are relevant and necessary to support or oppose a motion at issue before the court.

**Local Rule 83-182** Each party appearing in propria persona is under a continuing duty to notify the Clerk and all other parties of any change of address.

**Other Provisions:**

**Request for Case Status** The court will notify you as soon as any action is taken in your case. Due to the large number of civil actions pending before the court, THE CLERK IS UNABLE TO RESPOND IN WRITING TO INDIVIDUAL INQUIRES REGARDING THE STATUS OF YOUR CASE. As long as you keep the court apprised of your current address, you will receive all court decisions which might affect the status of your case.

**Copy Work** The Clerk's Office does not provide copies of documents to parties. Copies of documents may be obtained from Attorney's Diversified Service (ADS) by writing to them at: 1424 21st Street, Sacramento, CA 95814, or by phoning 916-441-4396 or 916-441-4466. The court will provide copies of docket sheets at \$0.50 per page. **Note: In Forma Pauperis** status does not include the cost of copies.

Victoria C. Minor  
Clerk of Court  
United States District Court

by: /s/ M. Plummer  
Deputy Clerk

The following is a sample Proof of Service. Pursuant to Rule 5 of the F.R.Cv.P. and Local Rule 5-135, each document filed after the court orders service in your case shall be served on opposing counsel and a proof of service attached to your document filed with the court.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

(Case Title)

Plaintiff or Petitioner

V.

Case Number: 2:99-CV-99999 ABC DFG  
(example case no.)

Defendant or Respondent

**SAMPLE PROOF OF SERVICE**

/

I hereby certify that on (Date), I served a copy  
of the attached (Title of Document Served and Filed),  
by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
envelope in the United States Mail at (Location of Mailing):

**(List Name and Address of Each Defendant or Attorney Served)**

I declare under penalty of perjury that the foregoing is true and correct.

(Name of Person Completing Service)

**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE****TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS**

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 73-305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case dispositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent to pursuant to 28 U.S.C. § 636(c) the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at [www.caed.uscourts.gov](http://www.caed.uscourts.gov) for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk

501 I Street, Room 4-200  
Sacramento, CA 95814

Office of the Clerk

2500 Tulare Street , Suite 1501  
Fresno, CA 93721

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**JOSE B HERNANDEZ,**  
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. 2:07-CV-02785-WBS-DAD

**SANTA CLARA COUNTY SUPERIOR COURT,**  
Defendant(s)/Respondents(s).

**IMPORTANT**

**IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF  
A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE  
SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.**

**CONSENT TO JURISDICTION OF  
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name:

( ) Plaintiff/Petitioner ( ) Defendant/Respondent  
( ) Counsel for \* \_\_\_\_\_

**DECLINE OF JURISDICTION OF  
UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name:

( ) Plaintiff/Petitioner ( ) Defendant/Respondent  
( ) Counsel for \* \_\_\_\_\_

*\*If representing more than one party, counsel must indicate name of each party responding.*